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June 10, 2023

Hon. Gregory H. Woods  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1920  
New York, NY 10007

**VIA CM/ECF**

Re: *U.S. Bank National Association, et al. v. The Charitable Donor Advised Fund, L.P. and CLO HoldCo, Ltd.*, **Case No. 1:21-cv-11059-GHW.**

Dear Judge Woods,

This letter is submitted on behalf of Defendants/Counter-Plaintiffs Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”) and CLO HoldCo, Ltd. (“CLOH”) (collectively, the “DAF Parties”) in response to the letter filed by Highland CLO Funding, Ltd. (“HCLOF”) on June 6, 2023 [Doc. 126] (“Letter”).

HCLOF’s Letter is effectively a preconference letter seeking judicial relief. Accordingly, the Letter fails to comply with this Court’s Individual Rules of Practice in Civil Cases Rule 2.E.ii., as it is not a “jointly composed letter.” But, in any event, its premise is misguided. HCLOF’s Letter represents an improper attempt to delay the DAF Parties from obtaining needed discovery to which they are entitled.

First, HCLOF argues that it received no prior notice of the DAF Parties’ Application for Issuance of Letter of Request [Doc. 118] (“Application”). No such notice is required under the procedures at issue. Nor would HCLOF be entitled to such notice if it was a domestic target of third-party discovery. In any event, HCLOF has actual notice of the Application, and it will have an opportunity to challenge the proposed discovery in Guernsey, under Guernsey’s rules of practice.

Second, HCLOF argues that “[t]he [DAF] Parties should not be permitted to circumvent [the] process [of responding to the DAF Parties’ counterclaim].” Seeking foreign discovery on issues germane to the pending disputes between Plaintiffs US Bank, Acis, and Joshua Terry, as well as to HCLOF, has no impact on HCLOF’s planned motion to dismiss, and discovery from HCLOF is needed irrespective of that motion.

Third, the DAF Parties understand that a hearing on the Letters of Request must be held in Guernsey after the Letters and an application are separately served on HCLOF in that jurisdiction.

HCLOF's efforts to avoid issuance of the Letters of Request in the United States will merely delay the consideration of HCLOF's arguments in the proper forum (*i.e.*, a Guernsey court). HCLOF should not be permitted to interfere with the DAF Parties' ability to obtain substantive discovery through an appropriate method — independent of whether HCLOF moves to dismiss based on jurisdictional grounds in this lawsuit.

The DAF Parties respectfully request that the Court reject HCLOF's Letter request and issue the Letters of Request.

Respectfully Submitted,

/s/ Sawnie A. McEntire

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